



General Assembly

January Session, 2001

**Raised Bill No. 1322**

LCO No. 4376

Referred to Committee on Judiciary

Introduced by:  
(JUD)

***AN ACT CONCERNING THE MERGER OF DISSIMILAR BUSINESS ENTITIES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 33-815 of the general statutes is repealed and the  
2 following is substituted in lieu thereof:

3 (a) As used in this section and sections 33-816 to 33-821, inclusive, as  
4 amended by this act, (1) "other business entity" means any association  
5 or legal entity, other than a domestic or foreign corporation, organized  
6 to conduct business including, but not limited to, limited partnerships,  
7 general partnerships, limited liability partnerships, limited liability  
8 companies, joint ventures, joint stock companies and statutory trusts,  
9 and (2) "interest or interests" means a beneficial ownership interest in  
10 any other business entity.

11 [(a)] (b) One or more corporations may merge [into another  
12 corporation] with or into any one or more corporations or any one or  
13 more other business entities formed or organized under the laws of  
14 this state or any other state or any foreign country or other foreign  
15 jurisdiction or any combination thereof if the board of directors of each

16 corporation that is a proposed party to the merger adopts and its  
17 shareholders, if required by section 33-817, as amended by this act,  
18 approve a plan of merger.

19 [(b)] (c) The plan of merger shall set forth: (1) The name of each  
20 corporation and other business entity planning to merge and the name  
21 of the surviving corporation or other business entity into which each  
22 other corporation or other business entity plans to merge; (2) the terms  
23 and conditions of the merger; and (3) the manner and basis of  
24 converting the shares [of each corporation] or interests of each party to  
25 the merger into shares [,] or interests or obligations or other securities  
26 of the surviving [or any other corporation or into cash] entity or into  
27 cash or other property in whole or part.

28 [(c)] (d) The plan of merger may set forth: (1) Amendments to the  
29 certificate of incorporation of the surviving corporation or the  
30 governance documents of the surviving other business entity; and (2)  
31 other provisions relating to the merger as are necessary or desirable.

32 (e) If the merger involves any other business entity, a written plan  
33 that meets the requirements of the statutory authority for merger of  
34 such other business entity shall be deemed to meet the requirements of  
35 a plan of merger under this section.

36 Sec. 2. Section 33-816 of the general statutes is repealed and the  
37 following is substituted in lieu thereof:

38 (a) A corporation may acquire all of the outstanding shares of one or  
39 more classes or series of another corporation or some or all of the  
40 interests of any other business entity if the board of directors of each  
41 corporation adopts and its shareholders, if required by section 33-817,  
42 as amended by this act, approve the exchange.

43 (b) The plan of exchange shall set forth: (1) The name of the  
44 corporation or other business entity whose shares or interests will be  
45 acquired and the name of the acquiring corporation or other business

46 entity; (2) the terms and conditions of the exchange; (3) the manner  
47 and basis of exchanging the shares or interests to be acquired for  
48 shares, obligations or other securities of the acquiring or any other  
49 corporation or other business entity or for cash or other property in  
50 whole or part.

51 (c) The plan of exchange may set forth other provisions relating to  
52 the exchange.

53 (d) This section does not limit the power of a corporation to acquire  
54 all or part of the shares of one or more classes or series of another  
55 corporation or the interest or interests of any other business entity  
56 through a voluntary exchange or otherwise.

57 (e) If the plan of exchange involves any other business entity, a  
58 written plan that meets the requirements of the statutory authority of  
59 share or interest exchange for such other business entity shall be  
60 deemed to meet the requirements of a plan of exchange under this  
61 section.

62 Sec. 3. Section 33-817 of the general statutes is repealed and the  
63 following is substituted in lieu thereof:

64 (a) After adopting a plan of merger or share or interest exchange,  
65 the board of directors of each corporation party to the merger, and the  
66 board of directors of the corporation whose shares will be acquired in  
67 the share or interest exchange, shall submit the plan of merger, except  
68 as provided in subsection (g) of this section, or share or interest  
69 exchange for approval by its shareholders.

70 (b) For a plan of merger or share or interest exchange to be  
71 approved: (1) The board of directors must recommend the plan of  
72 merger or share or interest exchange to the shareholders, unless the  
73 board of directors determines that because of conflict of interest or  
74 other special circumstances it should make no recommendation and  
75 communicates the basis for its determination to the shareholders with

76 the plan; and (2) the shareholders entitled to vote must approve the  
77 plan.

78 (c) The board of directors may condition its submission of the  
79 proposed merger or share or interest exchange on any basis.

80 (d) The corporation shall notify each shareholder, whether or not  
81 entitled to vote, of the proposed shareholders' meeting in accordance  
82 with section 33-699. The notice must also state that the purpose, or one  
83 of the purposes, of the meeting is to consider the plan of merger or  
84 share or interest exchange and contain or be accompanied by a copy or  
85 summary of the plan.

86 (e) Unless sections 33-600 to 33-998, inclusive, the certificate of  
87 incorporation or the board of directors acting pursuant to subsection  
88 (c) of this section requires a greater vote or a vote by voting groups,  
89 and except as provided in subsection (j) of this section, the plan of  
90 merger or share or interest exchange to be authorized must be  
91 approved by each voting group entitled to vote separately on the plan  
92 by a majority of all of the votes entitled to be cast on the plan by that  
93 voting group.

94 (f) Separate voting by voting groups is required: (1) On a plan of  
95 merger if the plan contains a provision that, if contained in a proposed  
96 amendment to the certificate of incorporation, would require action by  
97 one or more separate voting groups on the proposed amendment  
98 under section 33-798; (2) on a plan of share or interest exchange by  
99 each class or series of shares included in the exchange, with each class  
100 or series constituting a separate voting group.

101 (g) Action by the shareholders of the surviving corporation on a  
102 plan of merger is not required if: (1) The certificate of incorporation of  
103 the surviving corporation will not differ, except for amendments  
104 enumerated in section 33-796, from its certificate of incorporation  
105 before the merger; (2) each shareholder of the surviving corporation  
106 whose shares were outstanding immediately before the effective date

107 of the merger will hold the same number of shares, with identical  
108 designations, preferences, limitations and relative rights, immediately  
109 after; (3) the number of voting shares outstanding immediately after  
110 the merger, plus the number of voting shares issuable as a result of the  
111 merger, either by the conversion of securities issued pursuant to the  
112 merger or the exercise of rights and warrants issued pursuant to the  
113 merger, will not exceed by more than twenty per cent the total number  
114 of voting shares of the surviving corporation outstanding immediately  
115 before the merger; and (4) the number of participating shares  
116 outstanding immediately after the merger, plus the number of  
117 participating shares issuable as a result of the merger, either by the  
118 conversion of securities issued pursuant to the merger or the exercise  
119 of rights and warrants issued pursuant to the merger, will not exceed  
120 by more than twenty per cent the total number of participating shares  
121 outstanding immediately before the merger.

122 (h) As used in subsection (g) of this section: (1) "Participating  
123 shares" means shares that entitle their holders to participate without  
124 limitation in distributions; and (2) "voting shares" means shares that  
125 entitle their holders to vote unconditionally in elections of directors.

126 (i) After a merger or share or interest exchange is authorized, and at  
127 any time before the certificate of merger or share or interest exchange  
128 is filed, the planned merger or share or interest exchange may be  
129 abandoned, subject to any contractual rights, without further  
130 shareholder action, in accordance with the procedure set forth in the  
131 plan of merger or share or interest exchange or, if none is set forth, in  
132 the manner determined by the board of directors.

133 (j) Notwithstanding any provision of subsection (e) of this section to  
134 the contrary, a plan of merger or share or interest exchange of a  
135 corporation which was incorporated under the laws of this state,  
136 whether under chapter 599 of the general statutes, revised to January 1,  
137 1995, or any other general law or special act, prior to January 1, 1997, to  
138 be authorized by such corporation, shall be approved by (1) the

139 affirmative vote of at least two-thirds of the voting power of each  
140 voting group entitled to vote thereon unless the certificate of  
141 incorporation expressly provides otherwise, provided if such  
142 corporation is the surviving corporation of such merger and such plan  
143 of merger will not effect any change in or amendment to the certificate  
144 of incorporation of such corporation and the shares to be issued under  
145 the plan of merger could have been issued by the board of directors of  
146 such corporation without further authorization of the shareholders of  
147 such corporation, then the provisions of this subdivision shall not  
148 require approval of such plan of merger or share or interest exchange  
149 by the corporation's shareholders, and (2) the affirmative vote of at  
150 least two-thirds of the voting power of each class of stock of such  
151 corporation outstanding prior to January 1, 1997, and not otherwise  
152 entitled to vote thereon, unless the certificate of incorporation  
153 expressly provides otherwise; provided if such corporation is the  
154 surviving corporation of such merger and such plan of merger or share  
155 or interest exchange does not contain any provisions which, if  
156 contained in a proposed amendment to the certificate of incorporation  
157 of such corporation, would entitle any class or series of shareholders of  
158 such surviving corporation to vote as a class or series as provided in  
159 subsection (f) of section 33-797 or section 33-798, then the provisions of  
160 this subdivision shall not require approval of such plan of merger or  
161 share or interest exchange by the holders of such class or series not  
162 otherwise entitled to vote thereon.

163 Sec. 4. Section 33-819 of the general statutes is repealed and the  
164 following is substituted in lieu thereof:

165 (a) After a plan of merger or share or interest exchange is approved  
166 by the shareholders, or adopted by the board of directors if  
167 shareholder approval is not required, the surviving or acquiring  
168 corporation or other business entity surviving or resulting from the  
169 merger or share or interest exchange shall deliver to the Secretary of  
170 the State for filing a certificate of merger or share or interest exchange  
171 setting forth, in addition to the statutory requirements for a certificate

172 of merger or consolidation for any other business entity that is a party  
173 to the merger: (1) The plan of merger or share or interest exchange; (2)  
174 if shareholder approval was not required, a statement to that effect; (3)  
175 if approval of the shareholders of one or more corporations party to  
176 the merger or share exchange was required: (A) The designation,  
177 number of outstanding shares and number of votes entitled to be cast  
178 by each voting group entitled to vote separately on the plan as to each  
179 corporation; and (B) either the total number of votes cast for and  
180 against the plan by each voting group entitled to vote separately on the  
181 plan or the total number of undisputed votes cast for the plan  
182 separately by each voting group and a statement that the number cast  
183 for the plan by each voting group was sufficient for approval by that  
184 voting group.

185 (b) A merger or share or interest exchange takes effect upon the  
186 [effective date of the certificate of merger or share exchange] latest to  
187 occur of (1) the approval of the plan of merger or share or interest  
188 exchange by all parties to the merger, (2) the filing of the certificate of  
189 merger or share or interest exchange, or (3) the effective date of the  
190 merger or share or interest exchange as set forth in the certificate of  
191 merger or share or interest exchange.

192 Sec. 5. Section 33-820 of the general statutes is repealed and the  
193 following is substituted in lieu thereof:

194 (a) When a merger takes effect:

195 (1) Every other corporation or other business entity party to the  
196 merger merges into the surviving corporation or other business entity  
197 and the separate existence of every corporation or other business entity  
198 except the surviving corporation or other business entity ceases;

199 (2) The title to all real estate and other property owned by each  
200 corporation or other business entity party to the merger is vested in the  
201 surviving corporation or other business entity without reversion or  
202 impairment;

203 (3) The surviving corporation or other business entity has all  
204 liabilities of each corporation or other business entity party to the  
205 merger;

206 (4) A proceeding pending against any corporation or other business  
207 entity party to the merger may be continued as if the merger did not  
208 occur or the surviving corporation or other business entity may be  
209 substituted in the proceeding for the corporation or other business  
210 entity whose existence ceased;

211 (5) The certificate of incorporation or the applicable governance  
212 documents of the surviving corporation or other business entity is  
213 amended to the extent provided in the plan of merger; and

214 (6) The shares or interests of each corporation or other business  
215 entity party to the merger that are to be converted into shares or  
216 interests, obligations or other securities of the surviving or any other  
217 corporation or other business entity or into cash or other property are  
218 converted, and the former holders of the shares or interests are entitled  
219 only to the rights provided in the certificate of merger or to their rights  
220 under sections 33-855 to 33-872, inclusive.

221 (b) When a share or interest exchange takes effect, the shares or  
222 interests of each acquired corporation or other business entity are  
223 exchanged as provided in the plan, and the former holders of the  
224 shares or interests are entitled only to the exchange rights provided in  
225 the certificate of share exchange or to their rights under sections 33-855  
226 to 33-872, inclusive.

227 (c) Any holder of an interest in any other business entity that is a  
228 party to a merger or share or interest exchange who, prior to the  
229 merger or share or interest exchange, was obligated for any of the  
230 liabilities or obligations of the other business entity shall not be  
231 released by reason of the merger or share or interest exchange from  
232 any such liabilities or obligations arising prior to the effective time of  
233 the merger or share or interest exchange.

234 Sec. 6. Section 33-821 of the general statutes is repealed and the  
235 following is substituted in lieu thereof:

236 (a) One or more foreign corporations or other business entities may  
237 merge or enter into a share or interest exchange with one or more  
238 domestic corporations or other business entities if:

239 (1) In a merger, the merger is permitted by the law of the state or  
240 country under whose law each foreign corporation is incorporated or  
241 each other business entity is organized and each foreign corporation or  
242 other business entity complies with that law in effecting the merger;

243 (2) In a share or interest exchange, the corporation or other business  
244 entity whose shares or interests will be acquired is a domestic  
245 corporation or other business entity, whether or not a share or interest  
246 exchange is permitted by the law of the state or country under whose  
247 law the acquiring corporation is incorporated or the acquiring other  
248 business entity is organized;

249 (3) The foreign corporation or other business entity complies with  
250 section 33-819, as amended by this act, if it is the surviving corporation  
251 or other business entity of the merger or acquiring corporation or other  
252 business entity of the share or interest exchange; and

253 (4) Each domestic corporation or other business entity complies  
254 with the applicable provisions of sections 33-815 to 33-818, inclusive, as  
255 amended by this act, and, if it is the surviving corporation or other  
256 business entity of the merger or acquiring corporation or other  
257 business entity of the share or interest exchange, with section 33-819, as  
258 amended by this act.

259 (b) Upon the merger or share or interest exchange taking effect, the  
260 surviving foreign corporation or other business entity of a merger and  
261 the acquiring foreign corporation or other business entity of a share or  
262 interest exchange is deemed: (1) To appoint the Secretary of the State  
263 and [his] the secretary's successors in office as its agent for service of

264 process in a proceeding to enforce any obligation or the rights of  
265 dissenting shareholders of each domestic corporation party to the  
266 merger or share or interest exchange; and (2) to agree that it will  
267 promptly pay to the dissenting shareholders of each domestic  
268 corporation party to the merger or share or interest exchange the  
269 amount, if any, to which they are entitled under sections 33-855 to 33-  
270 872, inclusive.

271 (c) This section does not limit the power of a foreign corporation to  
272 acquire all or part of the shares of one or more classes or series of a  
273 domestic corporation or other business entity through a voluntary  
274 exchange or otherwise.

275 Sec. 7. Section 34-33a of the general statutes is repealed and the  
276 following is substituted in lieu thereof:

277 (a) As used in this section and sections 34-33b to 34-33f, inclusive, as  
278 amended by this act, (1) "other business entity" means any association  
279 or legal entity, other than a domestic or foreign limited partnership,  
280 organized to conduct business including, but not limited to,  
281 corporations, general partnerships, limited liability partnerships,  
282 limited liability companies, joint ventures, joint stock companies and  
283 statutory trusts, and (2) "interest or interests" means a beneficial  
284 ownership interest in any other business entity.

285 [(a)] (b) Pursuant to a plan of merger, approved in the manner  
286 provided by section 34-33c, [a domestic limited partnership] one or  
287 more limited partnerships may merge with or into any one or more  
288 limited partnerships or any one or more other business entities formed  
289 under the laws of this state or any other state or any foreign country or  
290 other foreign jurisdiction or any combination thereof, and the plan  
291 shall name the surviving or resulting limited partnership or other  
292 business entity.

293 [(b)] (c) The plan of merger, which may be embodied in an  
294 agreement, shall set forth: (1) The name and jurisdiction of

295 organization of each of the merging limited partnerships and [a  
296 designation of which limited partnership] other business entities and  
297 the name of the limited partnership or other business entity that is to  
298 be the surviving limited partnership or other business entity; (2) the  
299 terms and conditions of the merger, including the manner and basis of  
300 converting the shares or interests of each party to the merger into  
301 shares or interests or obligations of the surviving entity or into cash or  
302 other property in whole or in part, and which may include provision  
303 for the distribution by any merging limited partnership or by any  
304 other limited partnership of cash, securities of any limited partnership  
305 or other property in lieu of, in addition to, in exchange for or upon  
306 conversion of all or part of the interests in a limited partnership which  
307 is not the surviving or resulting limited partnership in the merger; (3)  
308 any changes in the certificate of limited partnership of the surviving  
309 limited partnership or the governance documents of the surviving  
310 other business entity; (4) the effective date or time, which shall be a  
311 date or time certain, of the merger if it is not to be effective upon the  
312 filing of the certificate of merger; and (5) such other provisions with  
313 respect to the merger as are deemed necessary or desirable. If the  
314 merger involves one or more other business entities, a written plan of  
315 merger that meets the requirements of the statutory authority for  
316 merger of such other business entity shall be deemed to meet the  
317 requirements of this section.

318 Sec. 8. Section 34-33b of the general statutes is repealed and the  
319 following is substituted in lieu thereof:

320 (a) Pursuant to a plan of consolidation, approved in the manner  
321 provided by section 34-33c, any domestic limited partnerships may  
322 consolidate with any one or more limited partnerships or any one or  
323 more other business entities formed under the laws of this state or any  
324 other state or any foreign country or other foreign jurisdiction or any  
325 combination thereof into a new limited partnership or other business  
326 entity.

327 (b) The plan of consolidation, which may be embodied in an  
328 agreement, shall set forth: (1) The name and jurisdiction of  
329 organization of each of the consolidating limited partnerships or other  
330 business entities and the name and jurisdiction of organization of the  
331 new limited partnership or other business entity, which name may be  
332 that of any of the consolidating limited partnerships or other business  
333 entities or any other available name pursuant to this chapter; (2) the  
334 terms and conditions of the consolidation, including the manner and  
335 basis of converting the interests of each limited partnership into shares,  
336 interests, obligations or other securities of the new limited partnership  
337 or other business entity or into cash or other property in whole or in  
338 part, and which may include provision for the distribution by any  
339 consolidating limited partnership of cash, securities of any limited  
340 partnership, or other property in lieu of, in addition to, in exchange for  
341 or upon conversion of all or part of the interests in any consolidating  
342 limited partnership or other business entity or of the new limited  
343 partnership or other business entity; (3) [with respect to the new] if the  
344 surviving entity is a limited partnership, a certificate of limited  
345 partnership complying with section 34-10; (4) the effective date or  
346 time, which shall be a date or time certain, of a consolidation if it is not  
347 to be effective upon the filing of the certificate of consolidation; and (5)  
348 such other provisions with respect to the consolidation as are deemed  
349 necessary or desirable. If the consolidation involves one or more other  
350 business entities, a written plan of consolidation that meets the  
351 requirements of the statutory authority for consolidation of such other  
352 business entity shall be deemed to meet the requirements of this  
353 section.

354 Sec. 9. Section 34-33d of the general statutes is repealed and the  
355 following is substituted in lieu thereof:

356 (a) [Any domestic limited partnership merging or consolidating  
357 under this section] After a plan of merger or consolidation is approved  
358 pursuant to section 34-33c, as amended by this act, the surviving or  
359 new limited partnership or other business entity shall file a certificate

360 of merger or consolidation, as the case may be, in the following  
361 manner: (1) A certificate of merger, executed by [each] any merging  
362 limited partnership which is a party thereto, executed as provided in  
363 section 34-10a, shall be filed as provided in section 34-10b with respect  
364 to the surviving or new limited partnership or other business entity. (2)  
365 A certificate of consolidation by [each] any consolidating limited  
366 partnership which is a party thereto, executed as provided in section  
367 34-10a, shall be filed as provided in section 34-10b in respect of the  
368 new limited partnership or other business entity together with an  
369 appointment of statutory agent for service as provided in section 34-  
370 13b or other applicable law. (3) General partners executing a certificate  
371 of merger or consolidation need not sign or swear as to facts set forth  
372 therein not pertaining to the limited partnership of which they are  
373 general partners.

374 (b) The certificate of merger or consolidation shall set forth, in  
375 addition to the statutory requirements for a certificate of merger or  
376 consolidation for any other business entity that is a party to the  
377 merger: (1) The plan of merger or consolidation; and (2) as to each  
378 merging or consolidating limited partnership, a statement of the vote  
379 of limited partners required to adopt the plan of merger or  
380 consolidation and the vote for the plan; and (3) if the surviving or new  
381 limited partnership is a foreign limited partnership, and is to transact  
382 business in this state, a statement that such surviving or new limited  
383 partnership, if any, shall comply with the provisions of this chapter  
384 respecting such limited partnerships, and in every case a statement  
385 irrevocably appointing the Secretary of the State as its attorney to  
386 accept service of process in any action, suit or proceeding for the  
387 enforcement of any obligations of any domestic merging or  
388 consolidating limited partnership for which it is liable pursuant to  
389 subsection (c) of section 34-33f, as amended by this act, to the plan of  
390 merger or consolidation, or to the laws governing such foreign limited  
391 partnership. If such appointment is not made, legal process in any  
392 such action, suit or proceeding may be served upon the Secretary of  
393 the State as provided in subsection (b) of section 34-38q as attorney for

394 such surviving or new limited partnership.

395 (c) The copy of the certificate of merger or consolidation, certified by  
396 the Secretary of the State, may also be filed for record in the records of  
397 deeds in the office of the town clerk in any town in this state. For such  
398 recording, the town clerk shall charge and collect the same fee as in the  
399 case of deeds.

400 (d) A certificate of merger or consolidation shall act as a certificate  
401 of cancellation for a domestic limited partnership which is not the  
402 surviving or new limited partnership in the merger or consolidation. A  
403 certificate of merger shall act as a certificate of amendment for a  
404 domestic limited partnership which survives such merger, to the  
405 extent provided by the plan of merger. In the case of a consolidation, if  
406 the new entity is a limited partnership, the certificate of limited  
407 partnership set forth in the certificate of consolidation shall be the  
408 certificate of limited partnership of the new limited partnership.

409 Sec. 10. Section 34-33f of the general statutes is repealed and the  
410 following is substituted in lieu thereof:

411 (a) The merging limited partnerships or other business entities or  
412 consolidating limited partnerships or other business entities party to  
413 the plan of merger or consolidation shall be a single limited  
414 partnership or other business entity, which, in the case of a merger  
415 shall be that limited partnership or other business entity designated in  
416 the plan of merger as the surviving limited partnership or other  
417 business entity and, in the case of a consolidation shall be the new  
418 limited partnership or other business entity provided for in the plan of  
419 consolidation.

420 (b) The separate existence of all merging or consolidating limited  
421 partnerships or other business entities party to the plan of merger or  
422 consolidation, except the surviving or new limited partnership or other  
423 business entity, shall cease.

424 (c) For the purposes of the laws of this state, the surviving or new  
425 limited partnership or other business entity shall thereupon and  
426 thereafter, to the extent consistent with its certificate of limited  
427 partnership or other governance documents as in effect upon effecting  
428 the merger or consolidation, possess all of the rights, privileges and  
429 powers of each of the limited partnerships and other business entities  
430 that have merged or consolidated, and all property, real, personal and  
431 mixed, and all debts due to any of such limited partnerships and other  
432 business entities as well as all other things and choses in action  
433 belonging to each of such limited partnerships and other business  
434 entities, and all and every other interests, of or belonging to or due to  
435 each of the limited partnerships and other business entities so merged  
436 or consolidated, shall be taken and transferred to and vested in such  
437 single limited partnership or other business entity without further act  
438 or deed; and the title to any real estate, or any interest therein, vested  
439 in any of such limited partnerships and other business entities shall  
440 not revert or be in any way impaired by reason of such merger or  
441 consolidation.

442 (d) Any devise, bequest, gift or grant, contained in any will or in  
443 any other instrument, made before or after the merger or  
444 consolidation, to or for the benefit of any of the merging or  
445 consolidating limited partnerships or other business entities shall inure  
446 to the benefit of the surviving or new limited partnership or other  
447 business entity. So far as is necessary for that purpose, the existence of  
448 each merging or consolidating limited partnership or other business  
449 entity shall be deemed to continue in and through the surviving or  
450 new limited partnership or other business entity.

451 (e) The surviving or new limited partnership or other business  
452 entity shall be liable for all the liabilities, obligations and penalties of  
453 each of the merging or consolidating limited partnerships and other  
454 business entities; and any claim existing or action or proceeding, civil  
455 or criminal, pending by or against any such limited partnership or  
456 other business entity may be prosecuted as if such merger or

457 consolidation had not taken place, or such surviving or new limited  
458 partnership or other business entity may be substituted in its place;  
459 and any judgment rendered against any of the merging or  
460 consolidating limited partnerships or other business entities may be  
461 enforced against the surviving or new limited partnership or other  
462 business entity. Neither the rights of creditors nor any liens upon the  
463 property of any merging or consolidating limited partnership shall be  
464 impaired by the merger or consolidation.

465 (f) Any general partner of a limited partnership or holder of an  
466 interest in any other business entity that is a party to a merger or  
467 consolidation who, prior to the merger, was obligated for any of the  
468 liabilities or obligations of the limited partnership or other business  
469 entity shall not be released by reason of the merger or consolidation  
470 from any such liabilities or obligations arising prior to the effective  
471 time of the merger or consolidation.

472 Sec. 11. Section 34-388 of the general statutes is repealed and the  
473 following is substituted in lieu thereof:

474 (a) As used in this section and sections 34-389 to 34-391, inclusive, as  
475 amended by this act, (1) "other business entity" means any association  
476 or legal entity, other than a domestic or foreign partnership, organized  
477 to conduct business including, but not limited to, corporations, limited  
478 partnerships, limited liability partnerships, limited liability companies,  
479 joint ventures, joint stock companies and statutory trusts, and (2)  
480 "interest or interests" means a beneficial ownership interest in any  
481 other business entity.

482 ~~[(a)]~~ (b) Pursuant to a plan of merger approved as provided in  
483 subsection [(c)] (d) of this section, [a partnership may be merged with  
484 one or more partnerships or limited partnerships] one or more  
485 partnerships may merge with or into any one or more partnerships or  
486 any one or more other business entities formed or organized under the  
487 laws of this state or any other state or any foreign country or other  
488 foreign jurisdiction or any combination thereof.

489        [(b)] (c) The plan of merger shall set forth:

490        (1) The name of each partnership or [limited partnership] other  
491        business entity that is a party to the merger;

492        (2) The name of the surviving entity into which the other  
493        partnerships or [limited partnerships] other business entities will  
494        merge;

495        (3) Whether the surviving entity is a partnership or [a limited  
496        partnership] other business entity and the status of each partner;

497        (4) The terms and conditions of the merger;

498        (5) The manner and basis of converting the shares or interests of  
499        each party to the merger into shares or interests or obligations of the  
500        surviving entity or into money or other property in whole or part;  
501        [and]

502        (6) The street address of the surviving entity's chief executive office;

503        (7) The effective date or time, which shall be a date or time certain,  
504        of the merger if it is not to be effective upon the filing of the certificate  
505        of merger; and

506        (8) Such other provisions with respect to the merger as are deemed  
507        necessary or desirable.

508        [(c)] (d) The plan of merger shall be approved:

509        (1) In the case of a partnership that is a party to the merger, by all of  
510        the partners or a number or percentage specified for merger in the  
511        partnership agreement; and

512        (2) In the case of a limited partnership that is a party to the merger,  
513        by the vote required for approval of a merger by the law of the state or  
514        foreign jurisdiction in which the limited partnership is organized and,  
515        in the absence of such a specifically applicable law, by all of the

516 partners, notwithstanding a provision to the contrary in the  
517 partnership agreement.

518 [(d)] (e) After a plan of merger is approved and before the merger  
519 takes effect, the plan may be amended or abandoned as provided in  
520 the plan.

521 [(e)] (f) The merger takes effect on the later of:

522 (1) The approval of the plan of merger by all parties to the merger,  
523 as provided in subsection [(c)] (d) of this section;

524 (2) The filing of all documents required by law to be filed as a  
525 condition to the effectiveness of the merger; or

526 (3) Any effective date specified in the plan of merger.

527 (g) If the merger involves one or more other business entities, a  
528 written plan of merger that meets the requirements of the statutory  
529 authority for merger for such other business entity shall be deemed to  
530 meet the requirements of a plan of merger under this section.

531 Sec. 12. Section 34-389 of the general statutes is repealed and the  
532 following is substituted in lieu thereof:

533 (a) When a merger takes effect:

534 (1) The separate existence of every partnership or [limited  
535 partnership] other business entity that is a party to the merger, other  
536 than the surviving entity, ceases;

537 (2) All property owned by each of the merged partnerships or  
538 [limited partnerships] other business entities vests in the surviving  
539 entity;

540 (3) All obligations of every partnership or [limited partnership]  
541 other business entity that is a party to the merger become the  
542 obligations of the surviving entity; and

543 (4) An action or proceeding pending against a partnership or  
544 [limited partnership] other business entity that is a party to the merger  
545 may be continued as if the merger had not occurred, or the surviving  
546 entity may be substituted as a party to the action or proceeding.

547 (b) The Secretary of the State is the agent for service of process in an  
548 action or proceeding against a surviving foreign partnership or  
549 [limited partnership] other business entity to enforce an obligation of a  
550 domestic partnership or [limited partnership] other business entity  
551 that is a party to a merger. Upon receipt of process, the Secretary of the  
552 State shall mail a copy of the process to the surviving foreign  
553 partnership or [limited partnership] other business entity.

554 (c) A partner of the surviving partnership or limited partnership is  
555 liable for:

556 (1) All obligations of a party to the merger for which the partner  
557 was personally liable before the merger;

558 (2) All other obligations of the surviving entity incurred before the  
559 merger by a party to the merger, but those obligations may be satisfied  
560 only out of property of the entity; and

561 (3) All obligations of the surviving entity incurred after the merger  
562 takes effect, but those obligations may be satisfied only out of property  
563 of the entity if the partner is a limited partner.

564 (d) If the obligations incurred before the merger by a party to the  
565 merger are not satisfied out of the property of the surviving  
566 partnership or limited partnership, the general partners of that party  
567 immediately before the effective date of the merger shall contribute the  
568 amount necessary to satisfy that party's obligations to the surviving  
569 entity, in the manner provided in section 34-378 or in sections 34-9 to  
570 34-38r, inclusive, of the jurisdiction in which the party was formed, as  
571 the case may be, as if the merged party were dissolved.

572 (e) A partner of a party to a merger between or among partnerships

573 or limited partnerships who does not become a partner of the  
574 surviving partnership or limited partnership is dissociated from the  
575 entity, of which that partner was a partner, as of the date the merger  
576 takes effect. The surviving entity shall cause the partner's interest in  
577 the entity to be purchased under section 34-362 or another statute  
578 specifically applicable to that partner's interest with respect to a  
579 merger. The surviving entity is bound under section 34-363 by an act of  
580 a general partner dissociated under this subsection, and the partner is  
581 liable under section 34-364 for transactions entered into by the  
582 surviving entity after the merger takes effect.

583 (f) Any partner of a partnership or holder of an interest in any other  
584 business entity that is a party to a merger who, prior to the merger,  
585 was obligated for any of the liabilities or obligations of the partnership  
586 or other business entity shall not be released by reason of the merger  
587 from any such liabilities or obligations arising prior to the effective  
588 time of the merger.

589 Sec. 13. Section 34-390 of the general statutes is repealed and the  
590 following is substituted in lieu thereof:

591 (a) After a merger, [the surviving partnership or limited partnership  
592 may file a statement that one or more partnerships or limited  
593 partnerships have merged into the surviving entity] if the surviving  
594 entity is a partnership, the partnership may file a statement that one or  
595 more partnerships or other business entities have merged into the  
596 surviving partnership.

597 (b) A statement of merger shall contain, in addition to the statutory  
598 requirements for a certificate of merger or consolidation for any other  
599 business entity that is a party to the merger:

600 (1) The name of each partnership or [limited partnership] other  
601 business entity that is a party to the merger;

602 (2) The name of the surviving entity into which the other

603 partnerships or [limited partnership] other business entities were  
604 merged;

605 (3) The street address of the surviving entity's chief executive office  
606 and of an office in this state, if any; and

607 [(4) Whether the surviving entity is a partnership or a limited  
608 partnership.]

609 (4) The type of entity of the surviving entity.

610 (c) Except as otherwise provided in subsection (d) of this section, for  
611 the purposes of section 34-323, property of the surviving partnership  
612 or [limited partnership] other business entity which before the merger  
613 was held in the name of another party to the merger is property held in  
614 the name of the surviving entity upon filing a statement of merger.

615 (d) For the purposes of section 34-323, real property of the surviving  
616 partnership or [limited partnership] other business entity which before  
617 the merger was held in the name of another party to the merger is  
618 property held in the name of the surviving entity upon recording a  
619 certified copy of the statement of merger in the office for recording  
620 transfers of that real property.

621 (e) A filed and, if appropriate, recorded statement of merger,  
622 executed and declared to be accurate pursuant to subsection (c) of  
623 section 34-305, stating the name of a partnership or [limited  
624 partnership] other business entity that is a party to the merger in  
625 whose name property was held before the merger and the name of the  
626 surviving entity, but not containing all of the other information  
627 required by subsection (b) of this section, operates with respect to the  
628 partnerships or [limited partnerships] other business entities named to  
629 the extent provided in subsections (c) and (d) of this section.

630 Sec. 14. Section 33-182i of the general statutes is repealed and the  
631 following is substituted in lieu thereof:

632 Chapter 601 is applicable to a corporation organized pursuant to  
633 this chapter except to the extent that any of the provisions of this  
634 chapter are interpreted to be in conflict with the provisions of said  
635 chapter 601, in which event the provisions of this chapter shall take  
636 precedence with respect to a corporation organized pursuant to the  
637 provisions of this chapter. A professional corporation organized under  
638 this chapter shall consolidate or merge only with another domestic  
639 professional corporation organized under this chapter, a domestic  
640 limited liability company organized under sections 34-100 to 34-242,  
641 inclusive, as amended by this act, or a general partnership or limited  
642 liability partnership organized under sections 34-300 to 34-434,  
643 inclusive, as amended by this act, to render the same specific  
644 professional service and a merger or consolidation with any foreign  
645 corporation or foreign limited liability company or limited liability  
646 partnership is prohibited.

647 Sec. 15. Section 34-193 of the general statutes is repealed and the  
648 following is substituted in lieu thereof:

649 (a) As used in this section and sections 34-194 to 34-198, inclusive, as  
650 amended by this act, "other business entity" means a corporation or a  
651 business trust or association, real estate investment trust, common law  
652 trust, general partnership, limited partnership, limited liability  
653 partnership, foreign limited liability company or any other  
654 unincorporated business.

655 ~~[(a)]~~ (b) Except as provided in subsection ~~[(b)]~~ (c) of this section, any  
656 one or more limited liability companies may merge or consolidate with  
657 or into any one or more limited liability companies or one or more  
658 other business entities formed or organized under the laws of this state  
659 or any other state or any foreign country or other foreign jurisdiction  
660 or any combination thereof in a manner provided in sections 34-194  
661 and 34-195, as amended by this act.

662 ~~[(b)]~~ (c) A limited liability company formed under sections 34-100 to  
663 34-242, inclusive, as amended by this act, to render professional

664 services shall merge or consolidate only with another domestic limited  
665 liability company formed under said sections to render the same  
666 professional service, and a merger or consolidation with any foreign  
667 limited liability company is prohibited.

668 Sec. 16. Section 34-194 of the general statutes is repealed and the  
669 following is substituted in lieu thereof:

670 (a) Unless otherwise provided in the articles of organization or the  
671 operating agreement, a proposed plan of merger or consolidation  
672 complying with the requirements of section 34-195, as amended by this  
673 act, shall be authorized and approved by each limited liability  
674 company that is a party to a proposed merger or consolidation by the  
675 affirmative vote of at least two-thirds in interest of the members.

676 (b) After a merger or consolidation is authorized and approved,  
677 unless the plan of merger or consolidation provides otherwise, and at  
678 any time before articles of merger or consolidation as provided for in  
679 section 34-196, as amended by this act, are filed, the plan of merger or  
680 consolidation may be abandoned, subject to any contractual rights, in  
681 accordance with the procedure set forth in the plan of merger or  
682 consolidation or, if none is set forth, by the unanimous consent of the  
683 members of each limited liability company that is a party to the merger  
684 or consolidation, unless the operating agreement of any such limited  
685 liability company provides otherwise.

686 Sec. 17. Section 34-195 of the general statutes is repealed and the  
687 following is substituted in lieu thereof:

688 (a) Each limited liability company that is a party to a proposed  
689 merger or consolidation shall enter into a written plan of merger or  
690 consolidation, which shall be approved in accordance with section 34-  
691 194, as amended by this act.

692 (b) The plan of merger or consolidation shall set forth: (1) The name  
693 of each limited liability company and any other business entity in the

694 merger or consolidation and the name of the surviving limited liability  
695 company or other business entity in a merger or the new limited  
696 liability company or other business entity in a consolidation; (2) the  
697 terms and conditions of the proposed merger or consolidation; (3) the  
698 manner and basis of converting the interests in each limited liability  
699 company or other business entity in the merger or consolidation into  
700 interests of the surviving or new limited liability company or other  
701 business entity or, in whole or in part, into cash or other property; (4)  
702 in the case of a merger, such amendments to the articles of  
703 organization of [the] any surviving limited liability company as are  
704 desired to be effected by the merger, or that no such changes are  
705 desired; (5) in the case of a consolidation, all of the statements required  
706 to be set forth in the articles of organization of any new limited liability  
707 company; and (6) such other provisions relating to the proposed  
708 merger or consolidation as are deemed necessary or desirable. If the  
709 merger or consolidation involves a corporation, a written plan that  
710 meets the requirements of section 33-815, as amended by this act, shall  
711 be deemed to meet the requirements of a plan of merger or  
712 consolidation under this section.

713 Sec. 18. Section 34-196 of the general statutes is repealed and the  
714 following is substituted in lieu thereof:

715 (a) After a plan of merger or consolidation is approved as provided  
716 in section 34-194, as amended by this act, the surviving or new limited  
717 liability company or other business entity surviving or resulting in or  
718 from the merger or consolidation shall deliver to the Secretary of the  
719 State for filing articles of merger or consolidation duly executed by  
720 [each] any limited liability company which is a party thereto setting  
721 forth: (1) The name and jurisdiction of formation or organization of  
722 each limited liability company and other business entity; (2) the  
723 effective date of the merger or consolidation if later than the date of  
724 filing of the articles of merger or consolidation; (3) the name of the  
725 surviving limited liability company, [or] new limited liability company  
726 or other business entity; (4) a statement that the plan of merger or

727 consolidation was duly authorized and approved by [each] any limited  
728 liability company in accordance with the provisions of section 34-194,  
729 as amended by this act, and the applicable governing provisions of  
730 each other business entity; (5) that the plan of merger or consolidation  
731 is on file at a place of business of the surviving or new limited liability  
732 company or other business entity and the address thereof; and (6) that  
733 a copy of the plan of merger or consolidation will be furnished by the  
734 surviving or new limited liability company or other business entity, on  
735 request and without cost, to any person holding an interest in any  
736 limited liability company that is a party to the merger or consolidation.

737 (b) A merger or consolidation takes effect upon the later of the  
738 effective date of the filing of the articles of merger or consolidation or  
739 the date set forth in the plan of merger or consolidation.

740 (c) The articles of merger or consolidation shall be executed by a  
741 limited liability company that is a party to the merger or consolidation  
742 in the manner provided for in section 34-109, and shall be filed with  
743 the Secretary of the State in the manner provided for in section 34-110.

744 (d) Articles of merger or consolidation shall act as articles of  
745 dissolution for a limited liability company which is not the surviving  
746 or new limited liability company in the merger or consolidation.

747 (e) A plan of merger or consolidation authorized and approved in  
748 accordance with section 34-194, as amended by this act, may effect any  
749 amendment to the operating agreement or effect the adoption of a new  
750 operating agreement for a limited liability company if it is the  
751 surviving or new limited liability company in the merger or  
752 consolidation. Such a plan of merger or consolidation may also  
753 provide that the operating agreement of any limited liability company  
754 that is a party to the merger or consolidation, including a limited  
755 liability company formed for the purpose of consummating a merger  
756 or consolidation, shall be the operating agreement of the surviving or  
757 new limited liability company. Any amendment to an operating  
758 agreement or adoption of a new operating agreement made pursuant

759 to this subsection shall be effective at the effective time or date of the  
760 merger or consolidation. The provisions of this subsection shall not be  
761 construed to limit the accomplishment of a merger or consolidation or  
762 of any of the matters referred to herein by any other means provided  
763 for in an operating agreement or other agreement or as otherwise  
764 permitted by law.

765 Sec. 19. Section 34-197 of the general statutes is repealed and the  
766 following is substituted in lieu thereof:

767 Upon the effectiveness of a merger or consolidation:

768 (1) The limited liability companies party to the plan of merger or  
769 consolidation shall be a single limited liability company which, in the  
770 case of a merger, shall be the limited liability company designated in  
771 the plan of merger as the surviving limited liability company and, in  
772 the case of a consolidation, shall be the new limited liability company  
773 provided for in the plan of consolidation.

774 (2) The separate existence of each limited liability company or other  
775 business entity that is a party to the plan of merger or consolidation,  
776 except the surviving or new limited liability company, shall cease.

777 (3) [The] Any surviving or new limited liability company shall  
778 thereupon and thereafter possess all the rights, privileges, immunities  
779 and powers of each of the merging or consolidating limited liability  
780 companies and is subject to all the restrictions, disabilities and duties  
781 of each of the merging or consolidating limited liability companies.

782 (4) [All] Any property, real, personal and mixed, and all debts due  
783 on whatever account, including promises to make capital  
784 contributions, and all other choses in action, and all and every other  
785 interest of or belonging to or due to each of the limited liability  
786 companies shall be vested in the surviving or new limited liability  
787 company or other business entity without further act or deed.

788 (5) The title to all real estate, and any interest therein, vested in any

789 such limited liability company shall not revert or be in any way  
790 impaired by reason of such merger or consolidation.

791 (6) [The] Any surviving or new limited liability company or other  
792 business entity shall be responsible and liable for all liabilities and  
793 obligations of each of the limited liability companies or other business  
794 entities that were merged or consolidated, and any claim existing or  
795 action or proceeding pending by or against any limited liability  
796 company that was a party to the merger or consolidation may be  
797 prosecuted as if such merger or consolidation had not taken place, or  
798 the surviving or new limited liability company or other business entity  
799 may be substituted in the action.

800 (7) Neither the rights of creditors nor any liens on the property of  
801 any limited liability company that is a party to the merger or  
802 consolidation shall be impaired by the merger or consolidation.

803 (8) The membership or other interests in a limited liability company  
804 that are to be converted or exchanged into interests, cash, obligations  
805 or other property under the terms of the plan of merger or  
806 consolidation are so converted, and the former holders thereof are  
807 entitled only to the rights provided in the plan of merger or  
808 consolidation or the rights otherwise provided by law.

809 Sec. 20. Section 34-198 of the general statutes is repealed and the  
810 following is substituted in lieu thereof:

811 [(a) Any one or more limited liability companies formed under  
812 sections 34-100 to 34-242, inclusive, may merge or consolidate with or  
813 into one or more foreign limited liability companies, or any one or  
814 more foreign limited liability companies may merge or consolidate  
815 with or into any one or more limited liability companies formed under  
816 said sections if: (1) The merger or consolidation is permitted by the law  
817 of the state or jurisdiction under whose laws each foreign limited  
818 liability company is organized or formed and each foreign limited  
819 liability company complies with that law in effecting the merger or

820 consolidation; (2) the foreign limited liability company complies with  
821 section 34-196 if it is the surviving or new limited liability company;  
822 and (3) each domestic limited liability company complies with the  
823 applicable provisions of sections 34-193 to 34-195, inclusive, and, if it is  
824 the surviving or new limited liability company, with section 34-196.]

825 [(b)] (a) Upon a merger involving one or more domestic limited  
826 liability companies taking effect, if the surviving or new limited  
827 liability company or other business entity is to be governed by the laws  
828 of any state other than this state or by the laws of the District of  
829 Columbia or of any foreign country, then the surviving or new limited  
830 liability company or other business entity shall agree: (1) That it may  
831 be served with process in this state in any proceeding for enforcement  
832 of any obligation of any limited liability company party to the merger  
833 or consolidation that was formed under the laws of this state, as well  
834 as for enforcement of any obligation of the surviving or new limited  
835 liability company or other business entity arising from the merger or  
836 consolidation; and (2) to irrevocably appoint the Secretary of the State  
837 as its agent for service of process in any such proceeding and the  
838 surviving or new limited liability company or other business entity  
839 shall specify the address to which a copy of the process shall be mailed  
840 to it by the Secretary of the State.

841 [(c)] (b) The effect of such merger or consolidation shall be as  
842 provided in section 34-197, as amended by this act, if the surviving or  
843 new limited liability company is to be a limited liability company  
844 governed by the laws of this state. If the surviving or new other  
845 business entity is to be governed by the laws of this state, the effect of  
846 such merger or consolidation shall be the same as provided in section  
847 34-197, as amended by this act, except as the laws of this state  
848 governing such other business entity provide otherwise. If the  
849 surviving or new [limited liability company] other business entity is to  
850 be governed by the laws of any jurisdiction other than this state, the  
851 effect of such merger or consolidation shall be the same as provided in  
852 section 34-197, as amended by this act, except as the laws of such other

853 jurisdiction provide otherwise.

**Statement of Purpose:**

To authorize the merger of dissimilar business entities.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*